

Where a business provides repair services that are accompanied with the transfer of tangible personal property, such transactions are generally subject to tax liability under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.140. (This is a GIL.)

February 28, 2006

Dear Xxxxx:

This letter is in response to your letter dated September 21, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We respectfully request a written opinion from the Illinois Department of Revenue as to the taxability of the following fact patterns.

FACTS:

Company A is a Process and Pipeline Services provider. In general, company A provides maintenance, repair, cleaning and testing services. Specifically, company A provides the following services*:

- 1) Process Services—Flushing, chemical cleaning, hydraulic and lube oil flushing, nitrogen foam inerting, nitrogen cooldowns, nitrogen helium leak testing, nitrogen urging, hot oil flushing, compressor run tests, temporary fuel gas supply, bolt tensioning, refrigerant recovery and transfer, pipe freezing, retro jetting, air blows and clearshot services.
- 2) Pipeline Services—Flooding, cleaning, gauging, hydrostatic testing, dewatering, air drying, vacuum drying, nitrogen inerting, nitrogen packing, pigging, product transfers, product filtration, gel services, product displacement, pneumatic testing, pump rental, mechanical pigging, intelligent pigging and decommissioning.
- 3) Pipeline Inspection Services

*These services are addressed in detail in Addendum A.

INQUIRY:

Should Company A be charging tax for such services? Does the nature of the service make a difference in taxability treatment, i.e. testing, repair, inspection, cleaning, maintenance?

FACTS:

In addition, Company A may provide materials with these services. Company A uses the following materials in conjunction with above-mentioned services:

Various Chemicals, mechanical pigs, foam pigs, caliper pigs, various gels, nitrogen, helium, leak test tape, bolts, gaskets, flanges and various tanks.

Materials are intended to be consumed during service. Company A generally breaks out costs on the invoice. Under certain situations, Company A invoices under a lump-sum contract.

INQUIRY:

Since Company A is the consumer of the materials, must Company A pay tax to their vendors when purchasing the materials to be used in conjunction with the services they provide? Must Company A charge tax to their customers for such materials upon completion of their services? Does invoicing change taxability; i.e. separately stated versus lump-sum?

FACTS:

Company A rents equipment for use in performing the above-mentioned services. Equipment rentals may or may not be accompanied with an operator. Company A charges the use of the equipment in one charge (including any operator charges).

INQUIRY:

If a rental includes an operator, is the charge taxable as a rental or is it treated as a service? Must the charge show a breakout of rental and operator charges on the invoice to qualify for an exemption?

FACTS:

Company A provides such process and pipeline services to refineries, petrochemical plants, power plants, gas process facilities, LNG facilities, compressor stations, pump stations, pipelines (onshore& offshore), offshore platforms, construction yards, steel plants, paper mills, floating production and storage vessels.

INQUIRY:

If sales tax is applicable, under what circumstances (if any) may Company A's customers provide them with a valid exemption certificate?

Your written response to the above-listed inquiries would be greatly appreciated. Please all me if you have any questions or need any additional information.

DEPARTMENT'S RESPONSE:

Services – Service Occupation Tax

Servicemen incur either Service Occupation Tax liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways:

1. Separately stated selling price;
2. 50% of serviceman's entire bill;
3. Service Occupation Tax on his cost price if he is a registered de minimis serviceman; or,
4. Use Tax on his cost price if he is an unregistered de minimis serviceman that is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Please see 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax. Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. A serviceman who incurs Service Occupation Tax on his selling price should provide Certificates of Resale to his suppliers when purchasing tangible personal property that will be transferred to service customers. Please refer to 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

De minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act may use the final method of determining tax liability. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal

property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108. These de minimis servicemen do not provide Certificates of Resale to suppliers.

Equipment Used in this State

Tangible personal property, such as equipment, that is purchased at retail and is used in Illinois is subject to Illinois Use Tax. Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310. In addition, depreciation is allowed for out-of-State use. See 86 Ill. Adm. Code 150.110.

Maintenance Agreements

The taxability of maintenance agreements depends upon if charges for the agreements are included in the selling price of the tangible personal property. If the charges for the agreements are included in the selling price of the tangible personal property, those charges are part of the gross receipts of the retail transaction and are subject to tax. No tax is incurred on the maintenance services or parts when the repair or servicing is performed.

If maintenance contracts are sold separately from tangible personal property, sales of the contracts are not taxable transactions. However, when maintenance services or parts are provided under the maintenance contracts, the service or repair companies will be acting as service providers under provisions of the Service Occupation Tax Act that provide that when service providers enter into agreements to provide maintenance services for particular pieces of equipment for stated periods of time at predetermined fees, the service providers incur Use Tax based on their cost price of tangible personal property transferred to customers incident to the completion of the maintenance service. See part (3) of subsection (b) of 86 Ill. Adm. Code Sec. 140.301.

Purchasers of separate maintenance agreements are not charged tax on the labor or tangible personal property that is transferred incident to the completion of the maintenance contract. Where a business provides repair or maintenance services that are accompanied with the transfer of tangible personal property, such transactions are generally subject to tax liability under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.140(l). Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service.

Leases

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. The fact that a lessor provides a equipment operator to the lessee makes no difference for Retailers' Occupation Tax and Use Tax purposes.

Exemption Certificates

In order to make tax free sales of tangible personal property, retailers in Illinois are required to document an exemption at the time a sale takes place in order to receive a point of sale exemption. The type of certification required to document an exempt sale will depend upon the type of exemption being claimed. Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill.

Adm. Code 130.1405. Other state's certificates are not allowed unless they contain the necessary information as set out in Section 130.1405. Please note that the purchaser must have an Illinois registration number to properly complete a Certificate of Resale. Blanket Certificates of Resale are allowed and the Department recommends that they be renewed no less frequently than every 3 years. Please note, a Certificate of Resale cannot be used for supplies that are consumed by a serviceman in a service transaction. As such, a serviceman will incur a Use Tax liability when purchasing such supplies. See ST 04-0205-GIL and ST 00-0003-GIL.

Exempt Organizations

If no tangible personal property is transferred to a service customer, then no tax liability is incurred, regardless of the service customer's exemption status. However, organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification "E- number." See 86 Ill. Adm. Code 130.2007. These E-numbers are valid for five years from issue date and this information is stated on the letter that issues the exemption. This number evidences that this State recognizes that the organization qualifies as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purpose. Sales to a governmental body are subject to tax unless the governmental body has an active exemption identification "E-number." See 86 Ill. Adm. Code 130.2080. If an organization or governmental body does not have an "E" number, then its purchases are subject to tax. Only sales to the organization or governmental body holding the "E" number are exempt, not sales to individual members of the organization. Sales to an exempt entity holding an E-number may be documented by retaining a copy of the exemption letter or by recording the entity's E-number in the seller's books and records. See 86 Ill. Adm. Code 140.106(d) and 140.108(a)(2)(A).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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